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IN THE

Supreme Court of the United States

October Term, 1965

No. 505

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, A CORPORATION,

Petitioner

vs.

HALDRED OVERSTREET

On Writ of Certiorari to the Supreme Court of Georgia

BRIEF FOR RESPONDENT

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Opinion Below

The opinion of the Supreme Court of Georgia (R. 94-117), affirming and modifying the judgment of the trial court is reported at 221 Ga. 16, 142 S.E. 2d 816 (1965). The order of the Georgia Supreme Court denying defendants' motion for a rehearing (R-120) is not reported.

Jurisdiction

The judgment of the Supreme Court of Georgia was entered on April 20, 1965, (R-117). A motion for rehearing was denied on May 7, 1965, (R-120). An extension of time until August 30, 1965, to file a petition for writ of certiorari was granted by Mr. Justice Black on July 30, 1965 (R-120-121). Petition for writ of certiorari was filed on August 30, 1965, and certiorari was granted on December 6, 1965, limited to the single question hereinafter set out (R-121).

Question Presented

Has petitioner National Association for the Advancement of Colored People, a New York corporation, been deprived of its property without due process of law under the Fourteenth Amendment by being held liable in damages for acts performed without its knowledge and by persons beyond its control?

STATEMENT

A. Prior Proceedings

Respondent agrees with petitioners' statement of prior proceedings.

B. Evidence Presented

W. W. Law is a resident of Savannah, Chatham County, Georgia, and president of the Savannah Branch of the N.A.A.C.P. and the Georgia State Conference of Branches N.A.A.C.P. both of which are unincorporated bodies under charters granted by petitioner N.A.A.C.P., a New York Corporation. Reverend F. D. Jaudon is First Vice-President of the Savannah Branch, N.A.A.C.P. (R-50-51). The function of the N.A.A.C.P is to give aid and assistance to people in the minority, meaning the Negro group in seeking their rights and protection under the constitution. The N.A.A.C.P. acts and operates in Georgia through the Savannah Chapter and other Chapters; gives orders and counsel to its local representatives at annual conventions; the local branch is affiliated with the N.A.A.C.P. and under its corporate chapter is a unit thereof (R-50-51); one paying dues to the Savannnah Branch also becomes a member of the N.A.A.C.P.; members of the Savannah Branch are members of the N.A.A.C.P.; a portion of the dues paid by members of the Savannah Branch goes to the N.A.A.C.P.; and the Savannah Branch is within the framework of the N.A.A.C.P. and is used in the furtherance of its business and interest (R-66-67). The respondent was the owner and operator of an open air market located in a racially mixed residential area in Savannah.

On May 30, 1962, Robert Lee Bolton, a Negro boy of fourteen and respondent's only Negro employee among seven employees, reported to the principal at his school and to his mother and aunt that he had just been physically assaulted by respondent who had accused him of stealing merchandise from the market and had slapped him beside the head and kicked him in the side. The boy further reported that respondent was intoxicated at the time of this incident.

A complaint of assault against respondent was immediately lodged with the Savannah Police by the aunt of the Bolton boy. When the boy and a Negro police officer went to respondent's premises they found him asleep in a chair and the officer stated that he appeared to have been drinking but was not drunk. Several of respondent's employees stated that respondent was not drinking and respondent testifying in his own behalf stated that he had not been drinking. The physician who examined the Bolton boy said that he found a bruised area on the side of his temple and that he complained of a soreness in the back and a stomach ache, and that because of difficulty in trying to control the boy with sedation, he kept him under observation in the hospital for forty-eight hours. The Bolton boy admitted that he had gone by a basketball court and played basketball with other boys before going to work that day. The principal of the Bolton boy's school testified that he had seen similar injuries as a result of boys participating in a basketbal game.

Bolton's mother testified that after she had taken her son to the hospital and returned home, she received several threatening telephone calls, that she reported these calls to the police and then contacted petitioners' Savannah Branch, NAACP. Respondent had already been arrested and taken to jail hours prior to such alleged telephone calls.

Petitioner Law testified that as a result of the mother of Bolton calling upon the NAACP to assist her in defending or protecting her child he called a meeting of the NAACP for the next night at which time it was determined to organize a campaign to withhold patronage from respondent because of his assault on the young Negro boy. He also testified that such meeting was held pursuant to a circular distributed during the day time prior to the meeting which read as follows: "NAACP mass meeting tonight, Saint Phillips Monumental AME Church on Park Avenue and Jefferson Street, Reverend F. D. Jaudon, pastor, at 8 o'clock, protesting the beating of a fourteen year old Negro boy by the owner of Tropical Market, 1601 Montgomery Street, corner of 32nd Street. Come get the truth about the brutality that sent this boy to the hospital where he remains a patient. Come tonight 8:00

P.M." He further testified that the wording of said circular had his approval (R-52-53). He further testified he nor any members of the board of directors or any member or official of the local NAACP ever discussed anything about the incident with respondent at anytime. He also testified that the church was filled with people attending the meeting but could only identify four by name. He further testified that in order to effectuate the picketing plan it was decided to place pickets on each corner of the streets surrounding respondent's market for the purpose of advising all potential customers that the pickets were not buying there because respondent had mistreated a Negro employee, and to request them also to withhold their patronage. On the following day pickets were stationed in accordance with the plan and the picketing continued until June 22, 1962, when a temporary injunction prohibiting their presence was entered.

There was testimony that the police received numerous calls to the area of respondent's market due to a large number of people participating in the picketing, to such an extent that it blocked street and sidewalk traffic.

Petitioner Law was at the scene of picketing many times sometimes for short periods of time and at others for a long period of time (R-55).

There was a great deal of testimony as to the acts of violence that occurred in and about the Tropical Market after the picketing commenced by petitioners on June 1, 1962. Respondent proved that prior to May 30, 1962, there had been no disturbances, acts of violence or any trouble in or about the Tropical Market and that after the pickets were placed on the outside, two colored men entered the store and asked for Mr. Overstreet, your respondent, stating that they had come to get him and that during this time crowds of colored people surrounded respondent's market. It was further proved that a witness, who lived in the vicinity of the Tropical Market, prior to the picketing was able to walk to work by herself but after the pickets were set up it was necessary for her husband or some other man to walk her to work. The reason she gave for this action was the crowds of Negroes

on the corners adjacent to the Tropical Market would say to her as she went by "well, today is a fine day to get her" or "Let's get her" or "why don't we get her today." On several occasions it was necessary for her to walk down the middle of the street immediately in front of respondent's market in order for her to get to the store. The pickets would yell or scream at potential customers entering the respondent's market that they, the customers were not being fair to their color and that they should trade across the street at another market because respondent had beaten the colored boy.

Another witness testified that the pickets had cursed her and also stated that they were going to molest her but she did not use these words during the trial but indicated that profanity was used to suggest what they were going to do. Customers that came into the Tropical Market and made purchases would soon return after being accosted by the pickets on the outside and request their money back without reason, cause or justification and return the merchandise. A witness identified one, Johnny Drayton, as being one of the picketers and also one of the ones that had made threats to her.

Another witness for respondent, stated that on several occasions she had heard threats made to potential customers of respondent's market and that she herself had been threatened by the pickets on one occasion when she entered the market to do her shopping. She further stated that after the picketing had started and while she was on her back porch which adjoined respondent's market she heard a pistol shot from the direction of the area where the pickets were stationed. Bricks and sticks were thrown at respondent's market and upon the roof of the building.

Another witness testified that the person that had made the threat of assaulting her and another lady and cursing them was among the picketers and she had seen him among the picketers on several occasions. She stated further that during the time of the picketing she received several calls while on duty at respondent's market to the effect that there was a bomb planted within the market.

Further evidence was adduced that the picketing was conducted by members of the local Branch of the NAACP, who were likewise members of the National NAACP, a New York Corporation (R. 54-55; 66-67).

One of the original defendants, W. W. Law testified that when a person joins a local branch and pays his dues a portion of said dues goes to petitioner and automatically makes him a member of petitioner corporation (R. 67). He further testified that the Local Chapter was a unit of petitioner corporation and that the Local Chapters were taught, counseled and briefed by petitioner corporation (R. 50-51).

W. W. Law, President of the Savannah Branch, NAACP, and President of the Georgia State Conference of NAACP, testified that he knew of no disavowment on the part of petitioner as to the actions complained of (R. 53-54).

SUMMARY OF AGREEMENT

An analysis of the record before this court will show that the finding that the NAACP participated in an illegal conspiracy by virtue of the conduct of other defendants to this action as well as by virtue of its own conduct, is strongly supported by the evidence.

In determining whether there was sufficient evidence to establish a cause of action as against the NAACP, it must be determined whether there is evidence that the defendants Law or Jaudon were acting as agents of the NAACP. The evidence showed that Law was President of both the Savannah Branch and of the Georgia State Conference of Branches of the NAACP. (Incidentally, in those capacities, he was in the position of being the chief spokesman and agent for the NAACP in the State of Georgia, and the primary person through whom they would deal with any matters affecting the carrying out of the purposes for which they are organized.) He, by means of the circulars, called a mass meeting of the NAACP and of the Savannah Chapter of the NAACP, in which meeting he and Jaudon participated and led the group in reaching the conclusion that the NAACP would picket the respondent's place of business by inducing customers and

prospective customers to refrain from trading with him; and pursuant thereto, Law selected pickets, placed them at various places around respondent's place of business, picketing himself, and generally directed the picketing (R-53).

"The function of the NAACP", according to the testimony of Law, "is to give aid and assistance to people in the minority group, meaning the Negro group in seeking their rights and protection under the constitution."

In furtherance of that plan, the NAACP acts and operates in Georgia through the Savannah Chapter and other chapters, which compose the Georgia State Conference of Branches of the NAACP. The petition was served upon the NAACP Corporation, the Savannah Branch, and the Georgia State Conference of Branches of the NAACP, by serving Law, as their agent. No plea to the jurisdiction of the court (because they were not properly subject thereto) or traverse of service (because they were not properly served through Law) was filed by the NAACP, but it submitted to the juisdiction of the Court by filing an answer, not made subject to its general demurrer, which alleged that the respondent did not state a cause of action against the NAACP. It also filed a motion to dismiss, predicated upon certain alleged constitutional protections.

In this regard, we think it extremely material to this case that a patently unlawful action had been taken involving mass picketing, a creation of an atmosphere of violence around respondent's premises, an inciting, inflaming, and prejudicing of customers, threats of violence, use by the pickets of vile and vulgar words and names, bricks and rocks were thrown onto the roof of the premises, a pistol shot had been fired from the vicinity of the picket line, and employees of respondent had been threatened with physical violence if they continued to work for respondent.

In a situation such as this, the NAACP was compelled, by law, reason, fairness and common sense, to disavow and repudiate any connection with such occurrences, if, as a matter of fact, they claimed to have none. Instead, they did not desire to do so but, on the contrary, were willing to receive and reap

the benefits which might accrue to them and their movement if such actions had been exonerated in the courts. If they had been successful with the malicious endeavor, they would have been put in position to wreak havoc in communities throughout the nation by establishing themselves as judge and jury and, without investigation or trial, take similar action against any person or persons who incurred their displeasure.

It is high time to challenge the assumption in which too many people have too long acquiesced, that groups that think they have been mistreated have the constitutional right to take the law into their own hands and carry on conduct without regard to the personal rights, property rights, or business rights which other people have and without regard to the total ruin they might cause to another's property, future ambitions, jobs, or lives.

The evidence is undisputed that all was peace and quiet around respondent's place of business until the picketing began and it returned only after the NAACP and the other parties were enjoined from further picketing of the place. As a result of the mass meeting of the Savannah Chapter and the NAACP, the picketing was led by pickets placed on the picket line by Law, they were joined by large numbers of sympathizers or other members of the conspiracy and the presence of the pickets brought about mass picketing, threats, violence, the use of vile, vulgar and indecent language toward respondent, his wife, employees and customers. The picketing was not peaceful, thus unlawful; and it was for an unlawful purpose—punishment of respondent for the alleged commission of a criminal offense, assault and battery.

W. W. Law, the NAACP's top representative in the State of Georgia, and President of both Local Chapter and the State Conference of the NAACP, used the corporate name, NAACP, and held himself out as representing the National Corporation. He acknowledged that the NAACP gave orders and counsel to its local representatives (R-51); the locals were units of and affiliated with the National Organization (R-50); one paying dues to the local organization also became a member of the NAACP; and a portion of the dues went to the NAACP.

ARGUMENT

I. The judgment below in the trial court and the affirmance by the appellate court was fully justified by evidence of NAACP's involvement from inception.

There were ample and sufficient reasons in the record before this court to justify the judgment in the trial court and the affirmance by the Supreme Court of the State of Georgia.

The heading of the circular distributed at the instance of Law showed the meeting to be held as an "NAACP Mass Meeting." The organizational framework of the NAACP, as shown by the testimony of Law as well as the argument of the NAACP in its brief, indicates clearly that the only means by which it can effectively carry out its aims and purposes throughout the country is through local chapters as its instrument. Any attacks on racial discrimination, unfair employment practices with regard to Negroes, or any other methods used by persons indicating their bias or prejudice toward Negroes, would have to originate almost without exception, with action by the local units of the NAACP. It would be difficult to think of a single situation calling for action because of any nefarious scheme, adopted by anyone to deprive the Negroes of their constitutional rights, which could be aptly and effectively handled by the NAACP without the aid and assistance of its local chapters or state conference of chapters. This, then, is the reason why the local chapters are permitted to use and do use the name NAACP in their activities. If the NAACP is not to be held responsible for activities carried out in its behalf by those obviously in position to work for it in the advancing of the aims and purposes for which it exists, then the power, prestige, and force of its name should be strictly circumscribed within the area of activities carried out by it alone and not with the aid of any of its branches.

There can be no doubt that its name is used by the locals because of the powerful and pursuasive effect it can have in dealings and negotiations with third parties and the resulting benefits certainly inure to the advancement of the common cause. If NAACP can never be held liable for actions taken by its locals at a local level, using its name and purporting to

operate for its benefit, unless it has taken specific previous action on a national level authorizing it, then, a fortiorari, it could never be connected legally with any nefarious, unlawful oppressive, and ruinous scheme which damages others as long as they carry out such schemes through the locals, taking advantage of the successful ones and maintaining that it has no responsibility for the unsuccessful one.

We believe the NAACP's responsibility in this regard is analagous to that of an international union. In **United States v. International Union of United Mine Workers, 89 F. Supp. 179,** the court stated at page 181:

> It is recognized by this Court that it has been held that "as long as a union is functioning as a union it must be held responsible for the mass action of its members." **United States vs. International Union, United Mine Workers et al., 77 F Supp. 563, afirmed 177 F 2nd 29, certiorari denied 338 U. S. 871.**

If acts of the nature of the ones committed in the case at bar were to involve and make liable only the locals and leave the NACP free of any concurrent liability, the use by the NAACP of its 1500 branches for such purposes would make it impossible for anyone to continue in business who incurred their displeasure for any reason, whether it be flimsy or substantial, related or totally unrelated to the pursuit of the purposes for which they are organized.

From what source does the major portion of its operating funds come? There would appear to be no doubt that it would come from the receipt of a portion of the dues paid by every member of every local throughout the country. This sharing of dues makes every such local member a member of the NAACP (R-67).

How do members of the locals receive their schooling and training to carry out the means and methods of effective work within the purview of the aims and purposes of their organizations? They are schooled and trained through workshops and discussion groups set up by the national president and directors of the national association and conducted by members of the national staff or leaders from various local units (R-51).

Do they have the same basic aims and purposes in the national organization and the local units? It is a well accepted fact as testified by defendant Law that the aims and purposes of the national and all units thereof are the promotion of the interest of Negroes.

All members of the lesser local groups are members of the greater group and any project carried out on a local level which results in gains and benefits to a local member also advances the general cause.

To substantiate respondent's contention that the action taken against respondent and his business was a conspirational effort of all the appellants to this Court, we refer to the answer given by W. W. Law to a question propounded to him by respondent's attorney. When asked if there had been a conspiracy between himself, and the other defendants, he answered that "there was no thought of conspiracy, none intended. We were engaged in what is normally the kind of protest that we feel necessary to engage in all throughout the Country." (R-66). By the use of the words "we" and "all throughout the country" Law certainly indicated that he spoke not only for the local group but as agent for the national organization because the Savannah Branch would be limited necessarily in its scope and area of operation. It indicates clearly that the actions of the local group were not only sanctioned by the NAACP but were a result of briefing, schooling and counseling by the NAACP. In **Cable Company v. Walker, 127 Ga. 65,** the Court said:

> "The fact of agency may be established by proof of circumstances, apparent, relations, and the conduct of the parties."

In Universalist Convention v. Guest, 179 Ga. 168 (2) 175 SE 466, the Court said: "A claim of agency may be established by circumstantial evidence . . ."

Guilford v. Stacer 53 Ga 619
Bank of the University v. Tuck 96 Ga 456 (23 SE 467)
Walton Guano Co. v. McCall 111 Ga 114 (36 SE 469)
Dibble v. Law 141 Ga 364 (80 SE 999)
Roberts v. Bank of Eufaula 20 Ga App 221 (92 SE 1015)

Sherrod v. Springfield Baptist Church 21 Ga App 200 (93 SE 1009)

Star Furniture Co. v. Dubberly 46 Ga App 178 (167 SE 207)

In **Shamrock Oil and Gas Co. v. Ethridge, 159 F. Supp. 693**, the Court States in headnotes as follows:

Headnote 2—When the facts demonstrate that a corporation is merely alter ego or business conduit of its governing or dominating personality, courts are not hesitant to pierce the corporate veil and look to the ultimate person in order to regard them as one for the purpose of preventing an injustice.

Headnote 3—In order to disregard the corporate entity, it is not necessary that plaintiff prove actual fraud, but it is enough if the recognition of the two entities as separate would result in an injustice.

II. The judgment below in the trial court and the affirmance by the appellate court was fully justified by evidence of the NAACP's ratification and affirmation of acts.

Looking to the record, we find that Law, Jaudon, and the Savannah Branch used the corporate name, NAACP, and held themselves out as representing the national corporation. The national corporation gave orders and counsel to its local representatives at annual conventions; the locals were affiliated with the national organization, and under its corporate charter, were units thereof; one paying dues to the local NAACP also became a member of the national NAACP; members of the local were members of the national NAACP, and a portion of the dues went to the NAACP. These facts evidence that the locals are within the framework of the national organization and are used in the furtherance of the latter's business and interest.

Even if the NAACP did not receive any notice of the acts until Law sent them a copy of the petition filed by respondent, we contend that, because of the strong circumstances

relating it to original involvement in this case, it had the obvious responsibility to show that it did not sanction or agree with what had been done in its name. A petition had been filed alleging that a "NAACP meeting" had been held, at which meeting an unlawful conspiracy had been formed for the sole purpose of picketing respondent's place of business, injuring and damaging his business, and punishing him for the alleged beating of a negro boy who worked for him. They were charged in said petition with the violation of Section 54-801 of the Code of Georgia (Geeorgia Laws 1947, page 620) relating to said pickets having threatened physical harm to the employees of respondent in an attempt to force them to quit the employment of respondent. It had to be apparent to them that there was not and had not been any legitimate controversy between respondent and the organizations and individuals charged with the conspiratorial planning and unlawful picketing. There were no issues relating to racial problems, discrimination because of race, employment disputes, or any other valid reason for the action taken.

The NAACP, at this point, had been informed by said petition that, pursuant to said conspiracy in which it was allegedly involved, there had been mass picketing by use of force, violence, and intimidation, harassment and other like activities, that such picketing was malevolent for the sole purpose of punishing one who was accused of committing an assault and battery upon an employee. It knew that peaceful picketing for a lawful purpose is protected under the free speech provisions of the Constitutions of the United States and of Georgia, but the petition had put them on notice that the picketing as alleged, plus the use of force, intimidation, violence or threats to prevent or attempt to prevent respondent's employees from continuing in his employ, had taken place.

At this point, they were charged with notice that there had never been an investigation by anyone involved in the unlawful conduct to ascertain the true facts surrounding the alleged beating of the negro boy by respondent, and that the parties involved had taken the law into their own hands without any justification whatsoever.

With these facts in hand, the law imposed upon the NAACP the responsibility of disavowing or repudiating the acts which had taken place, subject to a finding that they had ratified and affirmed said acts if they did not so disavow or repudiate.

> The relation of principal and agent arises wherever one person, expressly or by implication, authorized another to act for him, or subsequently ratifies the acts of another in his behalf. **Code of Georgia, Sec 4-101.**

The NAACP never at any time disavowed the agency of Law, Jaudon, or the Savannah Chapter in acting for it in this matter. It was notified of the action by Law. It came into court and defended the case on its merits, contending that a cause of action was not alleged or proven against it.

In the case of **Milkwagon Drivers v. Meadowmoor Dairies, 312 U. S. 297, at page 295,** the Court said:

> The Fourteenth Amendment still leaves the state ample discertion in dealing with manifestations of force in the settlement of industrial conflicts. And in exercising its power a state is not to be treated as though the technicalities of the laws of agency were written into the constitution. Certainly a state is not confined by the constitution to narrower limits in fashioning remedies for dealing with industrial disputes than the scope of discretion open to the National Labor Relations Board. It is true of a union as of an employer that it may be responsible for acts which it had not expressly authorized or which might not be attributable to it on strict application of the rules of respondent superior.

Citing: **International Asso. M.T.D.M.L. v. National Labor Relations Board, 311 U. S. 72; H. J. Heinz Co. v. National Labor Relations Board 311, U. S. 514.**

If Law originally acted without authority and assumed to act for the NAACP without authority, it had the option to repudiate or ratify the fact, but was required, under the unusual circumstances of this case, to do one or the other.

It is not requisite to the ratification of an unauthorized act of one assuming to act as agent of another that the acquiescence should be in express terms. In most cases such a ratification can be implied from the acts and conduct of the principal. As a general rule, if the principal, with full knowledge of the material facts, accepts and retains the benefits of the unauthorized act, he thereby ratifies the act. **Liberty Mutual Insurance Company v. Lipscomb, 56 Ga. App 15.**

Where, as in the case at bar, the NAACP never made an investigation of the matter to ascertain anything whatsoever about it but was thoroughly appraised by the petition of the unlawful conspiracy and unlawful acts, and it never repudiated the acts, being perfectly willing to sit by and receive whatever benefits the unlawful acts done would achieve in the general advancement of its cause, it is deemed to have affirmed them. See **Mechem, Outlines of Agency (3rd Ed), p. 94, Sec. 152: Southern Motors of Savannah v. Krieger, 86 Ga. App. 574 (71 SE 2nd 884); Haney School Furn. Co. v. Hightower Baptist Institute, 113 Ga. 289 (2) (38 SE 761); Glisson v. Burkhalter, 31 Ga. App. 365 (4) (120 SE 664).**

Section 219 of the Restatement of the Law Second, Agency 2nd, at Page 481, the discussion of "When Master is Liable for Torts of his Servant" shows the following: "Subsection (2) (d)—"The Servant purported to act or to speak on behalf of the principal and there was reliance upon apparent authority, or he was aided in accomplishing the tort by the existence of the agency relationship." Clause (d) explains that this "includes primarily situations in which the principal's liability is based upon conduct which is within the apparent authority of a servant, as where one purports to speak for his employer in defaming another or interfering with another's business."

The NAACP in the instant case permits, with impunity, the use of its corporate name by others, knowing the full force and impact on the Negroes in the community that such involvement in a matter by the national organization would

have. Those who would not normally respond to a call from a local chapter would consider a call from the national organization imperative.

The NAACP in its brief admits that the New York Corporation can neither function nor carry out the purposes for which the organization was created without its branches and that the destruction or impairment of its branches effects a mortal blow to the parent organization whose existence is posited on the eradication of racial prejudice in all areas of this country and the securing of equal rights for Negroes as individuals. They say that survival or insulation of the national corporation sans local units defeats the purpose of the organizations. Naturally, their argument goes to the contention that neither they nor their agents, nor their locals, should ever be held responsible for any tortious conduct, however reprehensible or ruinous to others. We are sure that this illogical conclusion has never received meritorious treatment by any court but it appears to me that it amply demonstrates good and sufficient reasons why the NAACP should be held responsible for its conduct in this case. It shows that the NAACP and its locals are so inextricably enmeshed and intertwined in aims, purposes, and functions that to insulate the national organization from any blame for acts done by others in its behalf goes contrary to the facts of life or principles of law.

The NAACP, on Page 28 of its brief, says that state action effectuated through judicial fiat purposed to remove local "Civil rights agitators," is sought to be accomplished by striking at the local units. This specious argument infers, without any justification anywhere in the record or anywhere in the case, that race relations or civil rights considerations were involved in this case. There is not one iota of merit in such inference. The case was fairly tried by the jury, the jury being properly charged by the trial judge, and no one could fairly or reasonably be surprised that, under the evidence properly introduced in the case and which so strongly showed the aggravated and meretricious conduct on the part of the defendants which led to the ruin of respondent's business, the jury returned the verdict that they did.

The trial jury were fully justified in finding the NAACP a party to the conspiracy and illegal picketing. In the **Restatement of the Law Second, Agency 2nd, Chapter 4, Page 232,** it is written: "Knowledge by the purported principal can be inferred as in other cases; where he has such information that a person of ordinary intelligence would infer the existence of the facts in question, the triers of fact ordinarily would find that he had knowledge of such facts."

In the **Restatement of the Law Second, Agency 2d, Sec. 94, at Page 244,** a Comment recites the following: "Silence under such circumstances that, according to the ordinary experience and habits of men, one would naturally be expected to speak if he did not consent, is evidence from which assent can be inferred. Such inference may be made although the purported principal had no knowledge that the other party would rely upon the supposed authority of the agent; his knowledge of such fact, however, coupled with his silence, would ordinarily justify an inference of assent by him. Whether or not such inference is to be drawn is a question for the jury, unless the case is so clear that reasonable men could come to but one conclusion."

With regard to acquiescence by a principal in an unauthorized transaction by his agent,, the case of **Glisson v. Burkhalter, supra 31 Ga. App 365,** says:

> While such an unauthorized transaction by an agent may be validated by the principal, and ratification will result by operation of law from the principal's acquiescence therein for an unreasonable length of time after notice, yet what is a reasonable time is ordinarily a question for the jury.

We respectfully contend that petitioner National Association for Advancement of Colored People, a New York Corporation, has not been deprived of its property without due process of law under the Fourteenth Amendment to the United States Constitution by being held liable in damages in this case, and that the Court's refusal to grant certiorari

as to the Savannah Branch, NAACP, W. W. Law and Rev. F. D. Jaudon was violative in no particular whatsoever of such parties' guarantees under the Fourteenth Amendment.

CONCLUSION

Wherefore, for the reason hereinabove stated, it is respectfully submitted that this Court should affirm the judgment below as to petitioner and should not review, as to the Savannah Branch, NAACP, W. W. Law and Rev. F. D. Jaudon, the judgment below.

Respectfully submitted,

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